

# MEETING TO APPROVE NEW ELECTRONIC COMMUNICATIONS POLICY

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## MEETING BEFORE THE COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTH CONGRESS FIRST SESSION

HEARING HELD IN WASHINGTON, DC, SEPTEMBER 5, 2003

Printed for the use of the Committee on House Administration



U.S. GOVERNMENT PRINTING OFFICE

89-894

WASHINGTON : 2003

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**BUSINESS MEETING TO APPROVE NEW COMMITTEE ELECTRONIC COMMUNICATIONS POLICY**

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**FRIDAY, SEPTEMBER 5, 2003**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOUSE ADMINISTRATION,  
*Washington, D.C.*

The committee met, pursuant to call, at 10:35 a.m., in Room 1310, Longworth House Office Building, Hon. Robert W. Ney (chairman of the committee) presiding.

Present: Representatives Ney, Ehlers, Mica, Linder, Doolittle, Larson, Millender-McDonald, and Brady.

Staff Present: Paul Vinovich, Staff Director; Fred Hay, General Counsel; George Hadijski, Professional Staff Member; Jennifer Hing, Assistant Clerk; Jeff Janas, Professional Staff Member; George Shevlin, Minority Staff Director; Charles Howell, Minority Chief Counsel; Ellen McCarthy, Minority Professional Staff Member; and Matt Pinkus, Minority Professional Staff Member.

The CHAIRMAN. The committee is now in order for the purpose of consideration of the committee resolution to modify the committee's policy on unsolicited mass communications contained in the Members' Congressional Handbook.

At this time, the Chair lays before the committee a committee resolution modifying the policy on unsolicited mass communication with regard to e-mail. I would like to begin the discussion with some opening remarks on the matter; and then, of course, I will recognize our ranking member, Mr. Larson, and any other member who wishes to be recognized. I appreciate the attendance of all the members who are here today on both sides of the aisle.

The committee is meeting today to consider a proposed change to its policy regarding electronic communications with constituents. To date, e-mails have been subject to the same regulations as regular mail. Today, the committee takes recognition of the obvious, that these forms of communications are in fact different and therefore should be regulated differently. With approval of this change, the committee will end the practice of applying 20th century regulations to a 21st century technology.

The U.S. House since January, 1995, I would note, has come a long way on technology. Prior to that, the House was not open to the world technologically. As time has passed now we begin to re-evaluate policies, how we work technology, how it affects us; and I think this policy, having taken a thorough look at it, will bring us up to where we need to be in the 21st century.

To understand the rationale for the proposed change it is important to understand the history, I believe, behind our current policy. Public Law 97-69, which passed in the 97th Congress, contained a provision prohibiting unsolicited mass mailings which are defined by the franking guidelines as mass mailings containing 500 or more pieces of substantially identical contents. If you get a thousand letters in for guns or against guns, whatever the issue is, those would be recognized as solicited mailings, but the 500 or more pieces of substantially identical content are mailings that are sent out, and it is unsolicited.

This cutoff took effect during the 60-day period before a primary or general election in which a Member's name appeared on an official ballot. This ban was put in place to limit a Member's advantage as an incumbent by restricting their ability to use taxpayer-financed mailings for political purposes or unsolicited mailings.

In 1995, the 60-day ban was lengthened to 90 days before a primary or general election; and on August the 7th of 1996 the committee applied the 90-day ban before an election consistently to all forms of mass communications to avoid having Members circumvent the ban through all the other various forms of communication that were at a Member's disposal.

The Republican majority was true to its promise of limiting and restrictions a Member's incumbent advantage by consistently placing restrictions on a Member's ability to use taxpayers' dollars for strictly political purposes. These sound policies were achieved in large part with the cooperation and support of our colleagues on the other side of the aisle, and today we are once again seeking Members on both sides to support another policy we believe is necessary to adapt to the changing times and methods in which Members are communicating. The policy proposal before the committee today seeks to create a separate category for electronic communications, or, as we know, e-mail, with respect to the unsolicited mass communications policy.

While the committee should maintain limits on spending which gives Members an incumbent advantage, the committee should also balance this policy with Members' responsibilities to represent and communicate with their constituencies. There is no doubt that web pages and e-mails have greatly enhanced the ability of people in this country and around the world to communicate their points of view, but it also raises a lot of other issues that we have to adapt to, and that is again why we are here today.

Our policies on the use of official resources should never stifle communication between Members and their constituents as it relates to official business. This proposed e-mail policy creates a category of subscriber lists that would enable a constituent to subscribe one time to a Member's periodic e-mail newsletter by clicking the icon on their Web site and allow the Member to keep sending legislative updates and information during the 90-day blackout period because these people have clicked the icon and have said "continue to post me on this." And I would note the Web sites also contain an icon that you can click to say "I don't want to receive these."

This policy would treat e-mail communications to individuals who have subscribed to a Member's Web site as what they are, that

is, a solicited form of communication because they have requested this. As such, they would not be subject to the 90-day ban as it applies only to unsolicited communication. This change is necessary because, under the current rules, once a Member reaches the 90-day blackout period, the Member must either cease sending out electronic legislative updates to people who have requested them or cease sending newsletters to constituents who have also requested them or the constituent would have to resubscribe each and every time they wanted to receive a periodic newspaper by going back on the Web site and each and every time relick the icon.

In the business world, when individuals subscribe to a periodic newsletter, or in fact when we subscribe to our periodicals, we would expect to continue to receive that newsletter until we unsubscribe or decline to receive it. The proposed policy contains just such a requirement, that the Member must include an option that enables the constituent to unsubscribe from the e-mail list if they choose to do that.

This change in definition also means that Members would not be required to go through all the steps necessary to obtain a franking advisory every time they want to sent out an electronic newsletter to 500 or more individuals because the individuals have subscribed to it. This is consistent with existing policy which does not require advisories from House Administration from franking for solicited communications. The content of any electronic newsletter must still meet franking content regulations and cannot contain overt political language.

This added responsibility is no different than the responsibility currently placed on Members of the House when they receive mass quantity postcards, issue-related petitions, or mass quantity telegrams. They have to, obviously, uphold to the principles of the House. In these circumstances where 500 or more constituents have requested a position paper from the Member, the Member is entitled to respond to all those individuals without obtaining a franking advisory from us even during the communications blackout period. So—as long as the content meets franking requirements. Further, there will be nothing in the proposed rule that would prohibit a Member from taking a cautious approach and going to the franking commission anyway should they want to seek guidance on a communication piece if they want to ensure complete compliance.

The rational for allowing Members this flexibility in communications is very simple. Unlike regular mail where each additional piece sent has an added cost, e-mails can be sent to 499 or 501 or 10,000 citizens at no additional cost. There are clearly infrastructure costs of paying for computers, paying for staff, et cetera, but those costs would occur regardless of whether this policy was enacted or it wasn't. This proposed change in policy does not represent any additional cost to the taxpayer whatsoever and will allow Members to keep constituents who want to be informed, informed. This is precisely why electronic communications should be distinguished from other more traditional forms of communication which do incur additional costs.

Fundamentally, the question is whether Member communication with constituents is something that should be promoted and en-

couraged, or regulated and discouraged. Modern technology has made it possible to enhance these communications for minimal costs, and this policy will promote those communications.

With that, I would like to conclude by urging all Members to support this commonsense change; and I will recognize our ranking Member, Mr. Larson, for comments.

Mr. LARSON. Thank you very much, Mr. Chairman.

Mr. Chairman, the Members of the minority party vigorously oppose this proposal in principle and for four very specific reasons.

First, we see this as a circumvention of the time-honored 90-day blackout period. I think, especially in this day and age, and while I agree with the chairman about the marvels of technology, it is a double-edged sword. On one hand, there are those that have access to information from a technological standpoint and those that do not. We feel that this opens up an opportunity, intentionally or not, for greater abuse. We feel that, with no bipartisan review, no public disclosure, the ability to abuse a process by sending e-mails outside of one's district, in a 90-day period that has been time honored when these matters could be achieved equally through a campaign Web site or campaign sign-up.

I would ask—I have written comments for the record, and I want to seek unanimous consent to revise and extend my remarks.

The CHAIRMAN. Without objection.

Mr. LARSON. Thank you, Mr. Chairman.

I hope that we can have a dialogue. We have prepared amendments to address every one of our concerns that I raise; and we feel strongly about these because I think, as every Member here of this committee, we care a great deal about the institutional process. I respect the intentions and understand the intent and the goals of this legislation, but sometimes we find, especially on this committee, we have to save Members from themselves. Sometimes we have to have rules and regulations that are followed where we have review bipartisanly to prevent abuse in a process.

All of us are incumbents. Anyone who runs for this office understands the enormous advantage that incumbents have already. This just adds to that advantage and flies in the face of what is a reasonable 90-day cutoff with respect to information and information that can be gained or received through a political process, through candidate committees as well, with no bipartisan review, with no opportunity for public disclosure where one can see what is actually going out in that e-mail.

With the opportunity for abuse, a person in the House of Representatives running for the United States Senate mailing outside of their districts, clearly against the rules of the House, who is to regulate that? Who oversees that? As important, if someone complains and feels that they have been wronged, where are the remedies? What are the solutions?

So, in principle, because of the circumvention of the 90-day cutoff, lack of bipartisan review, no public disclosure, an enormous temptation for abuse, we have to oppose this legislation. While I certainly would agree that the marvels of technology provide us with a wonderful opportunity to stay in touch with our constituents, why is it that those who don't have that technology at their disposal then become part of a digital divide by simple reason that

they don't have a computer, that they wait for a phone call or a fax or a letter. And, of course, that letter, phone call or fax would be forbidden under our rules because it requires taxpayer dollars, because it requires the use of our staff, et cetera.

So, Mr. Chairman, it is on that basis that we must oppose these. We do have perfecting amendments, if the majority is so inclined, to receive them.

With that, I will reserve the balance of my time.

[The statement of Mr. Larson follows:]

**OPENING STATEMENT OF HON. JOHN B. LARSON, RANKING  
MINORITY MEMBER, COMMITTEE ON HOUSE ADMINISTRATION**

Mr. Chairman, I am pleased that the House Administration Committee is resuming consideration of issues relating to the continuity of Congress. Since our hearing last year, nothing has happened to diminish the significance of the questions we will address here today, and the opportunity continues for Congress to ensure that our political institutions survive a catastrophic event which might disrupt both the personnel and the physical infrastructure required to govern our nation.

I join with the chairman in hoping that this effort will be ongoing on our committee and on the other committees in both chambers which have pieces of jurisdiction over this complex subject, and that we can enhance and refine the public debate with the contribution of the diverse group of witnesses in the panels who will testify today.

The argument has been made by some that, in dire circumstances, a crisis in the operation of Congress might not occur. It might not be necessary to conduct recorded votes, which would demonstrate the absence of a quorum. Major legislation could be passed by voice vote. The Members who remain would "do the right thing." But I don't find this kind of wishful thinking credible. The job of Members is to disagree and to resolve their differences over major areas of public policy, ultimately through voting. The Constitution provides a process and a structure of powers, and the checks and balances needed to exercise them. We are a government of laws, not of men. And we need laws—including perhaps also constitutional amendments—to resolve questions of congressional continuity.

I want to commend Chairman Sensenbrenner and Dreier for their initiative in introducing this important legislation before us today, following up on House action last year in passing H. Res. 558, referred to our committee, which urged states to expedite special elections for the House. I also want to congratulate Congressman Frost, ranking member of the Rules Committee, for his leadership of the bipartisan working group last year which secured passage of rules changes to clarify the declaration of vacancies in the House and to provide flexible new authority to alter the times and places of meetings in exigent circumstances, and also Congressman Baird, who is continuing to explore different approaches to reconstituting the House through a constitutional amendment.

We must fully understand the inter-relationships and ramifications of all potential statutory or constitutional remedies. These

proposals are not mutually exclusive and may indeed be complementary. And certainly the subject matter before us, relating to the structure and preservation of the Constitution and the Republic itself, presents the type of issue suitable for consideration through a constitutional amendment.

We may need to buttress our 18th Century founding document to adapt to threats which the abuse of 21st Century technology undreamed of in earlier eras now poses to it. Congress grappled briefly with these issues early in the nuclear era, with the Senate's passage, on three different occasions, of constitutional amendments providing for gubernatorial appointment of House Members. Congress also agreed to set-up a refuge in West Virginia at the Greenbrier Resort, on the assumption that there would be time to travel to and take shelter there once Soviet missiles were detected. It is amazing how rapidly advances in weapons of mass destruction have trumped what now appear as naive assumptions even of that comparatively recent era.

The principal subject of our hearing today is how to replenish the membership of the House as quickly as possible in the event of a catastrophe. The House in 1906 determined that the proper constitutional definition of a quorum consisted of a majority of those Members chosen, sworn and living; the same interpretation holds in the Senate. Under such conditions, the House might technically still legislate, no matter how small its membership might be. However, such a body would not necessarily be representative either geographically or politically of the larger House which existed prior to the cataclysmic event, and could not long retain the sense of legitimacy our governmental system must maintain to command the respect of the American people.

To further compound the potential problem with a quorum, the Constitution contains no mechanism for determining questions of potential disability. Disabled Members still count as part of the quorum even if they can not appear in the House chamber, which is the ultimate test of a Member's presence.

I think we can all agree that the ideal solution would be for the states to step up to the plate and provide more expeditious procedures in replenishing their membership in the House. After all, it is a matter of tremendous self interest for them to do so. However, states may not be able to accomplish the rapid reconstitution of the House under their current legal frameworks, and it has been argued that a Federal statute providing more uniform provisions could expedite reconvening of the House after a catastrophe.

This is what the Sensenbrenner bill attempts to do. The bill can serve as a valuable starting point for this debate. I want to commend the Judiciary Committee chairman for this initiative and urge him to also consider hearings on a variety of constitutional amendments which have been broached, subject matter that falls within the domain of that panel.

However, H.R. 2844 presents potential constitutional and practical difficulties and could require a substantial unfunded mandate on the states. It would very likely prevent compliance with the Uniformed and Overseas Civilians Absentee Voting Act. And there are important questions posed by the bill's effects on existing state laws dealing with the selection of candidates, the printing, prepara-

tion and distribution of ballots, selection and staffing of polling places, counting votes and certifying election results. There would also be only seven days, in most instances, to involve the public and conduct a campaign promising a real choice among candidates.

Our colleague from Texas, Sen. John Cornyn, who has submitted a statement for the record today, held an important hearing in the Judiciary Committee on continuity issues two weeks ago and distributed results of a questionnaire he sent to state and local officials who expressed virtually unanimous reservations about H.R. 2844. I ask unanimous consent that that document also be placed in the hearing record at this time.

In its specific examination of any proposed statute expediting special elections, this committee should determine how much time is sufficient to bring a popularly-elected House back up to a size which can simultaneously produce both a quorum to legislate as well as a body still representative of the American people. If we can find a way to do that which brings the House back into action when it is needed to act, the argument for a constitutional amendment will be reduced.

Perhaps we should enact a model special election statute which addresses some of the problems I noted, but leave it up to the states themselves to determine if they prefer it to their existing laws in a time of emergency. There is no pressing need for all such vacancies in the House—even several occurring within the same state—to be filled on the same day.

Proponents of a constitutional amendment argue that any workable and constitutional statute expediting special elections, if one could be crafted to work under circumstances which saw a majority of House members killed, would probably still leave the House unable to function for a period of five or six weeks at least. They argue that a new statute would be useful primarily as a supplement to a constitutional amendment allowing some form of temporary appointments to the House.

Mr. Chairman, I am open to supporting both a legislative approach and a constitutional amendment.

In their testimony, Chairmen Sensenbrenner and Dreier cited the Federalist Papers and remarks at the Constitutional Convention of our nation's great Founders, James Madison and Alexander Hamilton, on the unique nature of a House of Representatives comprised exclusively of Members elected by the people. Our colleague Sen. Leahy, former chairman and ranking member of the Judiciary Committee, said that "While the possibility that the House could be weakened by terrorist attack is frightening indeed, so too is transforming the essential nature of the People's House. Amending the Constitution should be a plan of last resort." But the Founders also created a Constitution which could be adapted to new challenges and used to restructure and preserve itself, and it gave to Congress the ability to propose changes when needed.

The House has always been elected by the people, but how relevant is our justifiable pride in that distinction if there is in fact no functioning House of Representatives due to a catastrophe and the lack of a quorum? A House somewhat different in form from the one we know could function temporarily, as long as the new structure derived from the Constitution. The Constitution provides

legitimacy. All seats would be refilled in the near future through election, and the status quo ante quickly restored. We currently have a president who is recognized as legitimate because he ultimately derives his existence from a constitutional process, even though another candidate received more votes from the people.

I am considering introducing a constitutional amendment which would require that, in event of a catastrophe and a sufficient number of vacancies in the House which we would define, the state legislatures would meet to appoint representatives to serve temporarily as full voting Members of the House of Representatives. There is ample precedent deriving from practices of legislatures in choosing members of the original Continental Congress, as well as their role in selecting United States Senators prior to the advent of popular election of senators in 1913.

The legislatures, which sometimes meet only in alternate years in some states, would be called into special session if necessary to achieve this objective. They could choose interim representatives who reside in the congressional district and are of the same political party as a deceased Member, and who could not run for election to the House while serving there temporarily. I realize there is great controversy about introducing the concept of party into the Constitution, but I believe it is important to try to retain as much continuity with the political preferences previously expressed by the people through their votes in the most recent election as possible.

I also think that, in the event of a crisis, we want the House focused on dealing with the emergency and passing urgent legislation, not gearing up for special election campaigns. I note that Mr. Lewis in his testimony raised the idea of state legislators themselves, with their experience in a parliamentary body, serving temporarily in the House, and I think that may have merit as long as they do it to serve the country, rather than to promote themselves to higher office.

To avoid potential deadlock in the process, should the legislature fail to make a choice within 3 days after convening, the governor of the state would be authorized to make the appointments subject to the same conditions I just mentioned. And while this process was underway, the states would be organizing special elections to fill the House seats in the normal manner for the remainder of the term.

I hope the witnesses will feel free to comment on this proposal, and I congratulate the chairman for his leadership on this issue.

The CHAIRMAN. I would ask for clarification. Are you asking us to receive them, or asking us to pass them? Two different things.

Mr. LARSON. Receive and pass is our objective.

The CHAIRMAN. We can do the receive parts.

[The Larson Amendments follow.]

#### AMENDMENT 1

Add the following new section at the end of the resolution:

“Notwithstanding any other provision of this resolution or any law, rule or regulation, no member may send a subscribed e-mail update within 90 days preceding a special, primary, general or run-off election in which the Member is a candidate.”

## AMENDMENT 2

Add the following new section at the end of the resolution:

“Notwithstanding any other provision of this resolution or any law, rule or regulation, no member may send a subscribed e-mail update outside the congressional district from which the Member is elected. Each Member must take all reasonable steps to ensure that individuals on the Member’s subscribed e-mail update list(s) are residents of the Member’s congressional district.”

## AMENDMENT 3

Add the following new section at the end of the resolution:

“Notwithstanding any other provision of this resolution or any law, rule or regulation, no member may send a subscribed e-mail update unless it has been reviewed and approved by the Commission on Congressional Mailing Standards.”

## AMENDMENT 4

Add the following new section at the end of the resolution:

“Notwithstanding any other provision of this resolution or any law, rule or regulation, no member may send a subscribed e-mail update more frequently than once every 30 days during the 90 days preceding a special, primary, general or run-off election in which the Member is a candidate. No member may send any subscribed e-mail update within 30 days of a special, primary, general or run-off election in which the Member is a candidate.”

## AMENDMENT 5

Add the following new section at the end of the resolution:

“Notwithstanding any other provision of this resolution or any law, rule or regulation, no member may send a subscribed e-mail update unless it is simultaneously transmitted as prescribed by the Committee on House Administration for immediate public disclosure.”

I just want to—and I am going to defer to Mr. Ehlers, but I did want to say that, on the disclosure issue right now, since these would be solicited by people, it is the same during a blackout where you have had a solicited mailing, 60 days reelection of a thousand pieces by mail, and you do respond to those because you are allowed to because they were solicited. Now we can’t review those either today, currently in the House. So this would be no different than that.

I want to say something about those types of situations. Whether it was a solicited e-mail or a solicited newsletter or an answer to a postcard, when people send these out and if they do send them out and they weren’t solicited, if enough of these went out—and this normally happens—people pick those up, whether it is kind of somebody in the political know, a Democrat committee man or a Republican committee man or woman, they pick them up and usually we do hear about them. They can still say, look, here is what I have got; it is political in its nature; it should not have been sent. And it does come to the franking commission.

So even currently today, if they are solicited, we still don’t review every Member’s letters above 500 if in fact they are solicited. So I see this no different than on that aspect.

I would also note I understand and appreciate, although I don't agree with the position that you have, and these things happen. But I compare this like to a marriage: We are having a spat, but there is no divorce.

So, with that, I will refer to Mr. Ehlers.

Mr. EHLERS. Thank you, Mr. Chairman.

Let me just give a bit of history on this.

Nine years ago, in 1994, when the Republicans were going to receive the majority, after the election, Mr. Gingrich asked me to do everything in my power to get all the House documents on the Internet by the time he was sworn in as Speaker. He also asked me in the course of that to computerize the House.

It is hard for those who arrived after that to realize what a total mess we had. Because of the history of operation in the House, where every office is essentially its own little fiefdom and every Member has its own budget, the computer systems had developed by each Member saying, well, I need a computer in my office and let us go out and get them and then, because he needed expertise, hiring a systems analyst to operate and choose the computers for that office.

I was appalled when I arrived here to discover it was easier for me to send an e-mail to Moscow than to send it 20 feet down the hall to a colleague, because we had 435 individual little businesses in the House with their own computer system. There were interconnections, but they were very complex because everyone had chosen their own equipment, their own software, their own systems approach, and we were spending huge amounts of money just interpreting e-mail that someone—there were six different e-mail programs operating in the House. We had to send everything to a central computer which would say, well, this was sent in CC mail, but I have to send it out in some other conversion, and they had to convert. We were spending close to \$500,000 a year just translating from one language to another.

As I say, it was a total mess. I spent a lot of time computerizing the House, getting the documents on the Internet.

When we developed this, I proposed—what we essentially have before us now I proposed at that time. The committee was a little concerned because it was this brand-new technology, and they said, well, let us just put it under franking for now. And I pointed out that that was totally inappropriate because franking was designed for snail mail and did not fit e-mail. But the precaution prevailed. The attitude was, well, let us see how the new system works and we can reevaluate. So right now we are reevaluating it. It took far too long to do that.

But I raised this at the last meeting because I had gotten a lot of objections from citizens who appreciated getting information through the weekly e-mail report that I send out, and they couldn't figure out why it stopped just when the action got the greatest shortly before the elections, and I had to explain to them that we have House rules preventing us from sending it out. They thought that was the most absurd thing they had heard, that they can't be informed during the 90 days before the election what is happening in the House of Representatives. I agreed with them, and that is

why I raised it at the last meeting, and I thought we had consensus within this committee to proceed with this change.

I appreciate some of the concerns that have been expressed; and if any abuses do appear in the future, certainly we would be happy to address them. But I think those are not particularly valid concerns. I don't think it is going to happen. Because if any Member should abuse the service and use it improperly during a campaign, that becomes a campaign issue. And it is not that those who are seeking to hold this office who are not incumbents have the short end of the stick. For example, they can run ads using quotes we have made on the floor on C-SPAN and we are not allowed to because we are bound by House rules, but the candidates are not because they are not yet Members of the House. So they have avenues available to them that we don't because of our restrictions.

The whole purpose of the e-mail newsletters is to educate the public about what we are doing here. These are not to curry favor. We are not to include self-flattery or flattery about our party or anything of that. It is simply straight stock news about what is going on at the Congress. And, in my case, the public really appreciates getting this; and I don't see why we have to arbitrarily stop informing them what the government is doing 90 days before an election, as I said, when generally there is a lot of action taking place.

So I believe this is as very good proposal, and I urge the attitude that we had 9 years ago when people were afraid of doing it and said, well, let us not do it and let us see what happens and maybe we can change—I would say, and have that attitude now, let us do this; and if there are problems, we will correct them as—

Mr. LARSON. Will the gentleman yield?

Mr. EHLERS. I will be happy to yield.

Mr. LARSON. Well, let me just first point out that, with regard to franking, that franking doesn't deal technologically with sealed mail, it deals legally with abuse. It was derived out of a court case to prevent abuse, and then Congress has seen fit to establish rules to prevent abuse. I readily agree with the advance of technology and the need to keep people informed, and that is why we still think that it is possible, given the technology, that with review, with at least public disclosure, there is an opportunity therefore to embrace the technology, even though in principle I think there should be a 90-day blackout because I believe every incumbent Member of Congress does have the same ability politically through campaigns to respond to any opponent during these time periods.

I have the deepest respect for our chairman and leader here and appreciate the comment with regard to marriage. However, this is a principal disagreement that the minority has. And as John Kennedy used to say about Peter Finley Dunn, it is a case of trust everyone but cut the cards. And especially when we are trying to ensure to the public that there is integrity in the voting process, there is no question in my mind that Vern Ehlers is going to follow the letter of the law and has more integrity than any Member of Congress that I have had to deal with. But, as I said earlier, we devise these rules oftentimes to help save Members from themselves or overzealous staff members or others who unintentionally

abuse the process and yet garner greater favor on the part of an incumbent than we already have.

Mr. EHLERS. Reclaiming my time. Just a quick response.

I have always objected to writing rules or laws because of something the bad guys might do when in the same process you are hurting the good folks. I am closely supportive of preventing bad folks from doing things or punishing them if they do, but you can't write it in a way that you are punishing the good folks who are trying to inform the public properly, and you can't punish the public which wants to know what we are doing.

The last point I want to make is, for the solicited responses that we send out during that 90-day period, someone writes us, someone sends us a stock postcard. You know, we get these 5,000 postcards that have been printed by some interest group, and they mail them to our constituents saying, mail this to your Congressman. They scarcely even know the issue, but they drop it in the mail. We respond, and no one sees it. Franking doesn't see it.

I would maintain that these e-mail lists, because we do not solicit names, these are names of people who have asked to be put on the list, and I put that in the category of solicited responses. It should not be under franking. If someone asks to be on our e-mail list, we could ask them to send in an e-mail every week to ask for that week's copy if you want, but they have done it once. Why should they do it every week? They have solicited these newsletters, and these solicited newsletters should not be subject to franking any more than——

Mr. LARSON. Would the gentleman entertain a question about solicitation?

The CHAIRMAN. No. The time of the gentleman has expired.

Mr. EHLERS. I am not an expert on solicitation. I hear that is against the law.

The CHAIRMAN. And we will move on. But I just want to make a point before we move on to see if there are further discussions. I want to read the rules for solicited communications:

They are not subject to a blackout 90 days before. There is no limit on the number of pieces that can be mailed. No franking advisory is required, and they are not restricted to in-district.

So, just to clarify, if you have a solicited piece of mail 3 weeks before the election, a thousand pieces that come in a postcard, you can again return the answer because it is not subject to blackout, no limit on the number of pieces, no franking advisory is required. So we don't know what they are sending out. Now, if they abuse it and we get a hold of one and someone files, we take appropriate action.

This e-mail would be no different because the e-mail was solicited. It would be no different than the thousand postcards that came in because it was solicited because somebody went to the Web site, clicked on the icon and said send it to me. So, just from my point of view, I see that as no different than the other.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman; and I agree with you and the ranking member that I can appreciate the 21st century technology. It is the wave of the future.

But not all Americans are on that wave. Certainly, those who are in my district that represent Watts and Compton and North Long

Beach are among the most impoverished people in this country. They do not have computer access. So when you talk about this proposal that you have presented, it really cuts across class lines. Because you are talking about a group of people who already are disadvantaged, and they will not feel as if they are part of this process, this fast-moving wave of the future, because they are not a party to that because they have no computers.

I do view this proposal as one that has no accountability because there is no bipartisan review. It is unregulated. Therefore, communication can be sent outside of one's district to other Members and other Members' districts, which I feel is really improper. And the e-mails, as I have read it, really can be sent regardless of the subject matter or the content. It seems as if then those e-mails can have some flavor of campaign material and substance while you are saying that you have got to monitor abuse. How do you monitor abuse when you have no accountability, it is unregulated, there is no oversight? I cannot see the rationality to that.

And, Mr. Ehlers, certainly I respect you immensely. But when you speak of this being something that happened back in 1994 when the Republicans took over, was this something that was expressed in this committee whereby one would begin to look at the possibility at raising the bar on e-mails in one's respective constituency or district? It just seems to me like this is a late-minute attempt to try to put one party in an advantaged state over the other one, and especially those of us who—in the Congressional Black Caucus who for the most part represent very poor districts where there aren't any computers, folks do not receive e-mails, and so therefore we are really at a very bad disadvantage.

This is why a lot of people are not going to the polls, because they see where persons who have e-mails and persons who have computers can receive immediate information prior to an election when they cannot do that and therefore they do not have that advantage of having information prior to voting. So it really does cut across class lines, it—I am really concerned about this. While I do appreciate and enjoy the 21st century technology, a lot of us or a lot of our constituents aren't there yet.

Mr. EHLERS. Will the gentlelady yield?

Ms. MILLENDER-McDONALD. Yes.

Mr. EHLERS. First of all, back to the history of this. In 1994—actually, it was 1995 by the time the system was being installed and 1996 before it was really operating. It was a 2-year program, and e-mail was relatively new. There were not that many recipients out there, and it was just a new thing, and the committee was cautious when I recommended that we recognize that this is something new. This is not like putting stamps on envelopes or writing our name on and franking them and sending them out. This is something totally new. They just felt uncomfortable and said, well, let us just see what develops here.

This proposal is not brand new now, either. We talked about it before the last election, and the feeling then was we should not do it because we had already had one particular situation. We had had an election already that had taken place, and we felt we shouldn't change horses in midstream so we should do it this time. And you can use that argument and stretch it out forever.

On the class argument, I don't quite follow that, because if the people of your district or some other districts don't have computers and don't have access to e-mail, I don't see how that benefits one party or the other because—

Ms. MILLENDER-MCDONALD. Let me reclaim my time just to answer your question.

Certainly when you have districts where you have more affluent people who have access to computers, then you have a rash of e-mail subscribers or persons who engage in e-mails. So that is the advantage. I mean, the class is there. You have districts where there are a great number of affluent folks, as opposed to the ones who do not have that at all.

Mr. EHLERS. Okay. If I may just respond to that a moment. I would simply say that my daughter is a librarian. They have total free access to anyone who wants to walk in the door and use the computers there and get the information that they want. And they actively are working with the minority communities, with great success with some communities and less success with others.

So I think that, first of all, I don't see that that has any effect on elections or is likely to affect elections. Just look at the distribution of votes. You look at the swing districts in this Congress. I don't think you will find that an argument that is—

Ms. MILLENDER-MCDONALD. Well, reclaiming my time, libraries do not have a large number of computers. When I sent out a mass mailer to ask people to support our troops, they had just a ton of folks trying to get to the computers in the library. They don't have enough computers there. So when you talk about having folks to go to the library to try to surf the Internet or whatever, that is just a true thing.

But continuing on, Mr. Chairman, you know, if there is any amendments to be done, then perhaps we should put newsletters in this whole scheme of things so that I can send newsletters within this 90-day block as my constituents should want to or desire some last-minute information because they don't have e-mails.

Again, I see no accountability here at all when this is unregulated. There is no oversight. I can't see how you can monitor abuse when you have neither one of these. And, Mr. Chairman, did you say in your opening statement—while I was listening, but then I was trying to write, too—over 500 mailers distributed within the 90-day period does not have to obtain clearance from franking? Did I hear that correct?

The CHAIRMAN. Let us say somebody sends 700 postcards on an issue to an office. Those are solicited, and the office can respond to that.

Ms. MILLENDER-MCDONALD. The office can respond?

The CHAIRMAN. Because they are solicited. And then they don't send us the letter and say, how should I answer? Here is my content.

Ms. MILLENDER-MCDONALD. So they can, without getting the approval of franking?

The CHAIRMAN. Currently.

Ms. MILLENDER-MCDONALD. And with the rash of e-mails that I am certain will take place given this 90-day lifting, would you ex-

pend your House resources for that, or does it have to be campaigning, given that you are within this 90-day period?

The CHAIRMAN. If they are unsolicited?

Ms. MILLENDER-MCDONALD. If they are unsolicited or solicited.

The CHAIRMAN. Oh, no. The current rules of the House: If they are solicited and someone mails me 800 pieces—

Ms. MILLENDER-MCDONALD. Then I can see that being House resources expended.

The CHAIRMAN. We do that as the current law. They send it back.

Ms. MILLENDER-MCDONALD. But what if—

The CHAIRMAN. If they are unsolicited, there is a blackout that you just can't start mailing newsletters to people that didn't ask you for the newsletters. You can't do that during the blackout period because that is unsolicited.

Mr. LARSON. Will the gentlelady yield?

Ms. MILLENDER-MCDONALD. Yes, please.

Mr. LARSON. At the heart of this—and certainly I concur with Mr. Ehlers in terms of getting information to people that are seeking information and following a specific issue all along. That makes all the sense in the world to me. Here is where the abuse comes, and it gets back to solicitation.

Throughout the course of a year or 2-year period, you go out to town hall meetings and whatever and people say, yes, if you want to contact me, sign up for my Web site, et cetera. Over the course of a 2-year period you accumulate a number of people who request an e-mail to you. So let us say that one is able to accumulate 10, 15, 20,000 e-mail addresses, and they need—and all of a sudden they get a response from you 2 days, a week, 10 days before an election period updating them on all you have done in your district and, oh, by the way, also telling them about that issue that they initially signed on or signed up for to receive your e-mail.

That is where the potential for the abuse lies. That is where, all of a sudden, aside from the information that you are distributing on a regular basis which in the proposal is categorized as an e-mail update, but the abuse comes not from Vern Ehlers, not from John Linder, not from Mr. Doolittle, but it comes from an overzealous staff person, someone saying, hey, look, we have this opportunity. There is no foreboding reason why we can't send out all of this information to our constituents that have signed up legitimately. They signed up for this proposal. And, to us, that seems like an unfair advantage, given the adherence to the 90-day blackout and lack of public disclosure and no bipartisan review.

Ms. MILLENDER-MCDONALD. I will reclaim my time only to say those are my sentiments exactly, Mr. Chairman; and for that reason I just cannot accept the proposal.

The CHAIRMAN. Thank the gentlelady.

Mr. Linder.

Mr. LINDER. I had a lot to say a little while ago, but this seems to be deteriorating so bad it is hardly worth talking about. Only back to what Vern said, and that is, you don't write the rules to punish everybody because of some bad actors.

I ran in a race a year ago last month, the election was, when my opponent broke every one of the current rules: moving e-mails that

accumulated on his official site to his campaign, sending unsolicited 499 letters to people in neighboring counties he never represented to names he got off of Chamber of Commerce lists.

We need to think about making rules that can be used during the course of the changing technology that we know the bad actors are going to abuse. They are going to abuse it. They abuse the current one right now. And it is easier to catch them, because it is so easy to get on their mailing list, and you can raise it as an issue. But you can't stop people from being bad actors. So I would like to see us move on.

Thank you.

Mr. LARSON. If the gentleman would yield.

By what standard, though, are we measuring this? I agree with what you are saying, but the only way that you can measure an abuse is if you have a standard, and our objection in principle is lack of a standard here. I know this is a new technology, but, frankly, all it is is another mode of transmitting a message.

Mr. LINDER. Which is nothing different than, frankly, the unsolicited fliers some people send out. If people are used to getting an update from you about what is getting on, it is just absolutely silly to stop them from getting it in the last 90 days. Now, if you want to abuse it, some people will. That works right now. They will abuse it. Some people hire people for their campaign and keep them for their official staff. That happens all the time. But it is a changing time.

I got three e-mails one day from a fellow who e-mailed me at 10:00 in the morning. We get thousands a week. He e-mailed me at 10:00 in the morning and then e-mailed me at 2:00 and then at 4:00 complaining because I hadn't answered either of his other e-mails. You just can't keep up with it. It is a changing time.

I think 9 years of sit back and taking a look at it should give us an opportunity to make some changes; and if the changes are abused, we will look at it again.

Mr. EHLERS. Will the gentleman yield?

Mr. LINDER. Of course.

Mr. EHLERS. I just also wanted to comment that the requirement is that every e-mail have a statement at the end: If you do not wish to receive these, just return this e-mail with "unsubscribe" in the subject matter, and you are off the list automatically. I mean, the list server is operated by HIR, not by each individual office. And it is an automatic thing. If someone doesn't want to get it, they just return it. Boom, they are off the list just like that.

Mr. LARSON. But why should e-mail be treated any differently than all the other forms of communication?

Mr. LINDER. First of all, it is terribly inexpensive.

Mr. LARSON. Agreed.

Mr. LINDER. It is terribly efficient. And because of the way it is done, you get a lot of the fluff out of the piece. It is a very convenient and sparse way to communicate.

Ms. MILLENDER-McDONALD. Will the gentleman yield for a minute?

Mr. LINDER. Sure.

Ms. MILLENDER-MCDONALD. But when you don't have access to the e-mail and, you know, you still want to communicate with your constituents——

Mr. LINDER. Sure. And you have town hall meetings and—this strikes me as the notion that we could cut down all of the tall trees in the forest so they would be no taller than the short ones. We don't punish the people who are succeeding because some people aren't. And you make an effort, like Vern said, for them to get access to computers. But this is not a way for which——

Ms. MILLENDER-MCDONALD. But, Sir——

Mr. LINDER. We should-reclaiming my time. Reclaiming my time. This whole issue is about rules for communication, not how many computers are in the world or who should be buying them.

I yield back.

The CHAIRMAN. The gentleman yields back his time.

Mr. Brady.

Mr. BRADY. Yes. Thank you, Mr. Chairman.

I feel very out of character responding on this issue. Being here for 4 or 5 or 6 years now, I have acquired a sense of fairness. But I am a party chairman, and I do see all the problems that this could cause.

My office—my congressional office will wind up being a campaign office for any other candidate that wants to run and can use anybody that has clicked on—which is solicited, by the way, because we put the click on there and we send it out. They click on. We are soliciting them to click back to us, and then they get their e-mail. And they can use that office, my office, for any other office that they are running for, including another congressional office that is not in my district.

And I differ with a few issues here, is that the difference between what we are talking about now and our opponents—as you said, you had an opponent—he paid for it. We are having our taxpayers pay for it now.

Mr. LINDER. That is incorrect. My opponent was an incumbent, and the Federal Government paid for it.

Mr. BRADY. Well, then that may have been wrong, and we should have done something about that. But the problem about the abuses also is that, after the abuses happen, they are gone. Or you could be elected after abusing this here. What do you do with an elected official then? You have got to bring him in front and he is gone. It doesn't happen. You know, you lost it already, so you can't punish. But if they abuse the power that you have here, then that becomes a problem. Maybe they did what you are talking about. Your opponent did what you are talking about. We are going to allow them to do right now legally. We will allow the candidates to do that. I mean, we should be a little bit about fairness here.

And, you know, and as the gentleman said about C-SPAN, if you have an opponent that may not be an incumbent is looking upon C-SPAN quotes and they use and we can't, we can use them. We can use it out of our campaign. We just can't use it—the difference is we just can't use it out of taxpayers' money. Just like an opponent that is a non-incumbent has to use their campaign money. I just think that it is a terrible thing to have when you can use it

for a get-out-to-vote on election day, and I think that it is a major unfairness on people that are not incumbents.

I again, like I say, feel out of character speaking as a party chairman, but it is what I feel.

The CHAIRMAN. Any further comments?

Mr. DOOLITTLE. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Doolittle.

Mr. DOOLITTLE. Well, I really don't think that is accurate, Mr. Brady, because you can't use it for get-out-the-vote on election day, because e-mails are still required to comply with franking regulations. So if you have sent out e-mails saying vote for me or it is really important that you all turn out to vote for our party or something, that would be a clear violation of existing franking standards. So I just feel like that is an extraneous issue that is not relevant to this particular proposal here.

I understand Ms. Millender-McDonald's concern. I don't agree with it, but I think I understand where she is coming from in terms of feeling her district or districts like that may be disadvantaged because there aren't as many computers I guess is Mr. Larson's point, too. But, nevertheless, that would perhaps affect everybody equally, whether they are Republicans or Democrats in the districts.

It seems to me, if I understand how this is supposed to work, can't you now when you send out regular mailings—not e-mails but regular mailings—have in there a box that people check if you want to receive updates? And if those boxes are checked and you get that list of names, those then become solicited communications and you can communicate right up to the day before election day now, regardless of the number, without having an advisory opinion from the franking commission. Is that not correct, Mr. Chairman?

The CHAIRMAN. Right.

Mr. DOOLITTLE. So all your proposal—

Mr. LARSON. Will the gentleman yield?

Mr. DOOLITTLE. Yes.

Mr. LARSON. But who is soliciting? Is the Member then who is soliciting the constituent, or is it the constituent that is actually soliciting the Member?

Mr. DOOLITTLE. Well, isn't it the same—go ahead.

Mr. LARSON. If I am sending a letter out to somebody and asking them if they wanted to sign up for my Web page or sign up to receive information from me, aren't I soliciting the constituent? Now, they may have to check it off, but haven't I been the one who initiated the solicitation?

Mr. DOOLITTLE. You have been. But once they have checked it off, then the burden shifts and all of a sudden they become the requester. That is how the rules operate, as I understand it.

Mr. LARSON. That is correct, but that is our point. My point is that if you are able to accumulate through the solicitation process, whether it is through a town hall—you have a public hearing, a town hall meeting. Postcards are passed out. People say, yes, I want to learn more about Mr. Linder and Mr. Doolittle's proposals on whatever. Then you accumulate those, and you have the ability circumventing a 90-day blackout, to days before an election send them en masse information about yourself, about you candidacy—

not get out to vote necessarily, but about all you have done on behalf of veterans, about all you have done. You know, a reminder, however, within the letter of the law, clearly from our perspective a violation of the spirit of the law and the purpose behind the 90-day blackout, which was to level the playing field, so to speak, over the advantage that incumbents—normally are different from Mr. Ehlers and I believe Mr. Linder and yourself—have been addressing in terms of the normal business contact. How absurd that, if I am giving a person regular updates on an issue that is important to them, that all of a sudden, because of this 90-day period, I can no longer do that.

So, it is—from our perspective, I think that we have to come up with a better way to establish a standard by which we are going to hold during these election periods so that we prevent abuse. And I completely agree with not wanting to harm the good guys or do something in an obtrusive manner that prevents the flow of information and enlightenment for our constituents, but, by the same token, as I said earlier, sometimes we have to save ourselves from ourselves.

Mr. DOOLITTLE. Well, in response to that I would say, if you are objecting to the idea that by accumulating lists you can then circumvent the blackout period, well, yes, you can, and you can circumvent it now through regular mail. And there is nothing sacrosanct about this blackout period, in my mind, by the way. I mean, the standard is what it is. It was once nothing, now it is 60 days, and—I mean, it was then 60 days and now it is 90 days. But you can clearly under the present rules, no dispute, send however many thousands of letters you have accumulated to the thousands of names that have requested these updates. You can do that through the mail now. So I don't see that applying this policy to e-mail is violating some principle. It is perfectly consistent with what we do on regular mail.

Mr. LARSON. I don't believe that that is correct. I believe that is only if they have solicited you through the mail individually.

Mr. DOOLITTLE. But they solicited you on the e-mails.

Mr. LARSON. Well, I would argue that that is not necessarily the case. I would argue that you have solicited them.

Mr. DOOLITTLE. Well, you have solicited them when you send out a regular mail and you say, if you would like updates, check this box when you mail this form back in. There is no point in—you know, you have your point of view, I guess I have mine. But it seems to me—

Mr. LARSON. But this legislation explicitly says we are circumventing the 90-days blackout.

Mr. DOOLITTLE. Now, see, that to me is muddying the waters. That is not circumventing anything. You are simply saying that an e-mail that is solicited is to be treated like a regular piece of mail that is solicited. It does not—the 90-day ban does not apply.

Mr. MILLENDER-MCDONALD. Would the gentleman yield? It certainly seems like you are circumventing the 90-day rule.

Mr. CHAIRMAN. The time has expired. With that, are there amendments?

Mr. LARSON. We have prepared amendments to address every one of these principled issues that we have raised, and we raise

these issues because we feel that there is the need for a dialogue and further discussion. We don't disagree with the concept of informing constituents on a regular basis. What we are concerned about is the potential for abuse. We don't want to prevent people from getting information. We want to try to do everything within our power to prevent abuse.

We want and desire public disclosure on these issues so that there is yet still even greater confidence in the electoral process, rather than creating, however well-intended, the impression that there is not. So that is the principal objection that we have. And it is my understanding that—and if the leader could clarify this—that the majority is not going to accept our amendments. I would defer to my colleagues for further comment, but it is not our desire to drag out this meeting. It is pretty clear that our objections are. I see no reason to bring forward four specific amendments and have those amendments voted on one by one, but I would like on final passage a roll call vote on the bill itself.

Mr. CHAIRMAN. Just to clarify. And I appreciate the minority has given us the amendments—they gave us the amendments in plenty of time to review them. I appreciate that. We did review them. I would be candid in saying an assessment after reviewing each of the amendments that, from our point of view, they would gut the intent. Because, again, these are solicited e-mails the same as solicited mail and, therefore, frankly, the votes wouldn't be there to pass them. But I do appreciate you giving them to us, And we did review them. I don't want to say we didn't, because we did look at them thoroughly. But as far as our side, we wouldn't be able to—we could accept discussing them and accept a vote on them, but we wouldn't be providing the votes to pass them.

Ms. MILLENDER-MCDONALD. Mr. Chairman, I have a question.

Mr. CHAIRMAN. The gentlelady.

Ms. MILLENDER-MCDONALD. When you define solicited mail, how do you define that? Is it within a certain time zone that this is solicitation, inquiry about certain positions that you have taken? Or is this for the entire cadre of e-mails that you have perhaps not so much had solicitation but you initiated solicitation of the e-mails that further expands this whole field of e-mails that you can respond to?

The CHAIRMAN. Solicited would be information requested by an individual to our offices.

I think probably—and when I first looked at this well over a year ago, when—we discussed this, actually, when Mr. Hoyer was the ranking member and we had staff discussions, the questions about the Web sites, too. You know, is that a solicitation because you have a Web site there that says click on this icon and you can get posted up on it? And then there is another one that says unclick this and we will unsubscribe you. And I don't think the fact of having—my personal opinion, the fact of having a Web site means that you are soliciting, because you are not, you know, mailing that Web site in to everybody and saying, "Here is my icon. Why don't you go in and click it?"

The CHAIRMAN. But the Web sites, as I understand it on these, contain an icon that says, I would like to subscribe to future information, or they can unsubscribe.

But solicited mailing is when a constituent makes a request, asks for information, or to be put on a newsletter.

Ms. MILLENDER-MCDONALD. All right. So then if that be the case, do we have a time line by which that solicitation will be done, within this 90 days, or do we do this and then just spread it out to all of the e-mail folks to give them the opportunity of what your latest position is on issues?

Mr. EHLERS. If the gentlelady will yield. I would have to do more research to be positive of this, but I believe that—leave e-mail out of it. If someone writes you a letter and asks for some information, that is a solicitation for information. I don't believe there is any time line.

For example, if I get 5,000 postcards asking me to stop the pollution flowing in to the Great Lakes, and I happen to be very active on the Great Lakes, I think it is perfectly reasonable for me to send them a mailing any time I am in office responding, giving them updates on what is happening in the Congress about pollution flowing into the Great lakes. There is no time line.

Ms. MILLENDER-MCDONALD. But, see, abuse can come when one then says, I really should have this type of response to all of those e-mail folks to let them know my position on this.

Mr. EHLERS. But then that would be—the same situation, whether it is e-mail or regular mail.

Ms. MILLENDER-MCDONALD. It would be an abuse?

Mr. EHLERS. No. It is permitted. It is a solicited response, whether it is e-mail or regular mail. There is no difference.

Ms. MILLENDER-MCDONALD. But even those who have not solicited that information, and you feel compelled to just respond to all of your e-mails.

Mr. EHLERS. You asked about solicited, whether there is a time line. I am saying there is no time restriction that I am aware of on solicited regular mail or solicited e-mail. And I just—you know, I can understand your concerns. And I think we probably need further conversations on this.

But I would encourage us to adopt this proposal. If abuses occur, and I suspect they will—but I suspect that they will appear in ways that we haven't imagined, because, as Mr. Linder has pointed out, people can be very resourceful in abusing the regulations, the laws and so forth, and we simply address these as they come up, because I—you have to recognize, first of all, this is not going to be unsupervised. You are still required to meet the franking standards with these—with your e-mail newsletters. That is a requirement. It is easily, very easily, supervised, because all you have to do, if you wanted to watch me, is simply go to my Web site and click on the newsletter list, and you get my newsletters, and you can examine them. And since we don't even handle the lists in our own offices, we wouldn't know whether someone who would be inspecting them is getting them.

It is going to be self-policing to a great extent. I think this would be wonderful campaign fodder. If someone does abuse the system 3 days before an election, the opponent can hold a press conference, say, look, they are abusing the power of their office. They have sent out this e-mail which is illegal under House franking standards.

So I think much of the abuses you have anticipated would be stopped that way. I worry about the ones that we haven't anticipated. We are going to have to address those as time goes on.

The CHAIRMAN. Mr. Mica.

Mr. MICA. Well, Mr. Chairman, I think this has been a good discussion. And I think, though, that it is appropriate at this time, and I move that the committee resolution modifying the unsolicited mass communications policy be adopted.

The CHAIRMAN. The question is on the motion. Those in favor of the motion will say aye.

Those opposed will say no.

Mr. LARSON. Mr. Chairman, I ask for a recorded vote. And, Mr. Chairman, if I might, and I thank you, we remain very concerned about the potential for abuse within this process. And especially given the spotlight that our election process has come under in recent years, I think we should go to extraordinary lengths as Members of Congress to try to prevent abuse.

Under this amendment proposed by Majority, mass communications to be distributed via e-mail to a mailing list compiled by a Member, by soliciting of a constituent to request that the Member send him or her e-mail updates would no longer be considered unsolicited mass communications; no longer be required to receive an advisory opinion from the Franking Commission, thus eliminating the bipartisan review of communication to determine whether or not the content is in compliance with applicable statute, rule or regulation; no longer be subject to public disclosure; and no longer be prohibited during the 90-day period preceding an election in which a Member's name appears on the ballot for any public office.

We have prepared amendments. This discussion is clear. You understand our principled objections. We just want these to be on the record for our concern about this. And we will pursue in earnest—and I agree with Mr. Ehlers that there are perhaps things here, too, that we haven't even anticipated. That is why we feel strongly and principled that we should oppose this and do everything within our power as a body to try to prevent abuse during the election process.

The CHAIRMAN. Before we call the roll, I just want to say that I appreciate your sincerity on the issue. I disagree in the sense that these are solicited, but I do appreciate your sincerity on the issue. It has been a good discussion.

And with that, the clerk will call the roll.

The CLERK. Mr. Ehlers.

Mr. EHLERS. Yes.

The CLERK. Mr. Mica.

Mr. MICA. Aye.

The CLERK. Mr. Linder.

Mr. LINDER. Aye.

The CLERK. Mr. Doolittle.

Mr. DOOLITTLE. Aye.

The CLERK. Mr. Reynolds.

Mr. REYNOLDS.

[No response.]

The CLERK. Mr. Larson.

Mr. LARSON. No.

The CLERK. Ms. Millender-McDonald.

Ms. MILLENDER-McDONALD. No.

The CLERK. Mr. Brady.

Mr. BRADY. No.

The CLERK. Mr. Chairman.

The CHAIRMAN. Yes.

Five yeas, three nays. The motion is agreed to, and the committee resolution modifying the unsolicited mass communication policy is adopted.

I would ask unanimous consent that Members have 7 legislative days for statements and materials to be entered in the appropriate place in the record. Without objection, the material will be entered.

I also ask unanimous consent that staff be authorized to make technical and confirming changes on all matters concerned by the committee at today's meeting. Without objection, so ordered.

Having completed our business for today, the committee is adjourned.

[Whereupon, at 11:40 a.m., the committee was adjourned.]

ROBERT W. NEY, OHIO,  
CHAIRMAN  
VERNON J. EHMERS, MICHIGAN  
JOHN L. MCCA, FLORIDA  
JOHN LINDER, GEORGIA  
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September 15, 2003



Bob Ney  
Chairman

Pursuant to Committee Rule (4)a of the Committee on House Administration rules, I submit for the record Committee Resolution 108-5. This resolution regarding unsolicited mass communication contained in the Members' Congressional Handbook was adopted on September 5, 2003. This language amended the handbook and I have attached the new policy language for submission.

**COMMITTEE ON HOUSE ADMINISTRATION**

**Committee Resolution 108 - 5**

**Amendment to Regulation of Unsolicited Mass Communications**

**Adopted on \_\_\_\_\_, 2003**

1. ***Resolved*** that the Committee on House Administration Regulations of Unsolicited
2. Mass Communications as contained in the *Members' Congressional Handbook* are
3. amended by the language attached hereto and incorporated herein.

## **Electronic Communications**

Ordinary and necessary expenses related to electronic communications (Internet, fax machines, etc.) are reimbursable. All official electronic communication content must comply with the Franking Regulations.

### **Subscribed E-mail updates**

A subscribed e-mail update is an e-mail sent to constituents who have individually subscribed to an e-mail list. Members must notify constituents who subscribe to e-mail updates that the constituent is authorizing the Member to send regular e-mail updates from the Member's office to the person's e-mail account. All e-mail updates to subscribers must contain an option that enables the constituent to unsubscribe from the e-mail list. Members may send subscribed e-mail updates without obtaining an advisory opinion.

### **Non-subscribed E-mail updates**

If each e-mail address used in a mass communication was not obtained with consent for subscribed e-mail updates, then the Member must receive a Franking Advisory prior to the distribution of the mass communication.

*Please see Unsolicited Mass Communications Restrictions.*

### **Unsolicited Mass Communication Restrictions**

Unsolicited mass communication is defined consistent with Franking Regulations as any unsolicited communication of substantially identical content to 500 or more persons in a session of Congress.

Except where noted, unsolicited mass communications, regardless of the means of transmittal, must receive an Advisory Opinion from the Franking Commission prior to dissemination. Advisory Opinions may be obtained from the Franking Commission at x59337.

Expenditures from the MRA for unsolicited mass communications, regardless of the means of transmittal, are prohibited if such communication occurs fewer than 90 days immediately before the date of any primary or general election (whether regular, special, or runoff) in which the Member's name will appear on an official ballot for election or re-election to public office.

Examples of unsolicited mass communication are:

1. Radio, TV, Internet, or newspaper advertisements of town hall meetings.
2. Radio or newspaper advertisements announcing a personal appearance of Member
3. Newspaper inserts
4. Automated phone calls
5. Facsimiles
6. Mass mailings
7. Posters, leaflets, handouts, etc., that are distributed
8. Purchase of radio broadcast time
9. Production and distribution costs for video and audio services
10. Non-subscriber list e-mails

This restriction does not apply to the following:

1. Direct response to communications (i.e. solicited communications)
2. Communications to Members of Congress and other government officials
3. News releases
4. Web sites and other electronic bulletin boards that post information for voluntary public access
5. Advertisements for employee position and internship openings, U.S. Military Academy Days, and An Artistic Discovery
6. Member's television appearance as a media guest, whether by newspaper interview, radio, television or other electronic means
7. Previously recorded shows and Public Service Announcements aired voluntarily by a media outlet, when no expenses are incurred by the Member
8. Purchases of research materials, including video or audio-tapes; and Video Teleconferencing
9. E-mail subscriber list

*Please see Electronic Communications.*